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5 **BEFORE THE**
6 **BOARD OF REGISTERED NURSING**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 2012-449

10 **RALPH CHEN**
11 **2951 Murat Street**
12 **San Diego, CA 92117**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Registered Nurse License No. 462280

Respondent.

13 **FINDINGS OF FACT**

14 1. On or about February 16, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
15 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
16 of Consumer Affairs, filed Accusation No. 2012-449 against Ralph Chen (Respondent) before the
17 Board of Registered Nursing. (Accusation is attached as Exhibit A.)

18 2. On or about March 31, 1991, the Board of Registered Nursing (Board) issued
19 Registered Nurse License No. 462280 to Respondent. The Registered Nurse License expired on
20 January 31, 2003, and has not been renewed.

21 3. On or about February 16, 2012, Respondent was served by Certified and First Class
22 Mail copies of the Accusation No. 2012-449, Statement to Respondent, Notice of Defense,
23 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
24 and 11507.7) at Respondent's address of record which, pursuant to California Code of
25 Regulations, title 16, section 1409.1, and Business and Professions Code section 136, is required
26 to be reported and maintained with the Board, which was and is:

27 2951 Murat Street
28 San Diego, CA 92117

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about February 23, 2012, and February 28, 2012, the aforementioned
5 documents were returned by the U.S. Postal Service marked "Attempted - Not Known." The
6 address on the documents was the same as the address on file with the Board.

7 6. On or about April 3, 2012, Respondent was served by Certified and First Class Mail
8 copies of the Accusation No. 2012-449, Statement to Respondent, Notice of Defense, Request for
9 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
10 an alternate address for Respondent, which was and is:

11 1238 Bangor St
12 San Diego, CA 92106

13 7. On or about April 27, 2012, the aforementioned documents were returned by the U.S.
14 Postal Service marked "Return to Sender."

15 8. On or about May 7, 2012,, Respondent was served by Certified and First Class Mail
16 copies of the Accusation No. 2012-449, Statement to Respondent, Notice of Defense, Request for
17 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
18 Respondent's address verified by Nursys¹, which was and is:

19 2253 60th Street
20 Brooklyn, NY 11204

21 9. On or about May 16, 2012, the Domestic Return Receipt was returned with a
22 signature indicating the Accusation package served by certified mail was accepted on behalf of
23 Respondent.

24 10. Respondent failed to maintain an updated address with the Board and the Board has
25 made multiple attempts to serve Respondent at his address on file, plus two alternate addresses.

26 ¹ The NURSUS nurse licensure and disciplinary database is the repository for the
27 licensure and disciplinary data of its Member State Boards of Nursing. Individual state boards of
28 nursing regularly submit and update their licensure and disciplinary information on individual
nurses to the NURSUS database.

1 Respondent has not made himself available for service and therefore, has not availed himself of
2 his right to file a notice of defense and appear at hearing.

3 11. Government Code section 11506 states, in pertinent part:

4 (c) The respondent shall be entitled to a hearing on the merits if the respondent
5 files a notice of defense, and the notice shall be deemed a specific denial of all parts
6 of the accusation not expressly admitted. Failure to file a notice of defense shall
7 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
8 may nevertheless grant a hearing.

9 12. Respondent failed to file a Notice of Defense within 15 days after service upon him
10 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
11 2012-449.

12 13. California Government Code section 11520 states, in pertinent part:

13 (a) If the respondent either fails to file a notice of defense or to appear at the
14 hearing, the agency may take action based upon the respondent's express admissions
15 or upon other evidence and affidavits may be used as evidence without any notice to
16 respondent.

17 14. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondent is in default. The Board will take action without further hearing and, based on the
19 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
20 taking official notice of all the investigatory reports, exhibits and statements contained therein on
21 file at the Board's offices regarding the allegations contained in Accusation No. 2012-449, finds
22 that the charges and allegations in Accusation No. 2012-449, are separately and severally, found
23 to be true and correct by clear and convincing evidence.

24 15. Taking official notice of its own internal records, pursuant to Business and
25 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
26 and Enforcement is \$1,087.50 as of June 5, 2012.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Ralph Chen has subjected his
3 Registered Nurse License No. 462280 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
6 Nurse License based upon the following violations alleged in the Accusation which are supported
7 by the Default Decision Investigatory Evidence Packet in this case:

8 Respondent has subjected his license to disciplinary action under sections 490 and
9 2761, subdivision (f) of the Code in that on or about August 23, 2011, in a criminal proceeding
10 entitled *People of the State of California v. Ralph Chen*, in San Diego County Superior Court,
11 case number CD234576, Respondent was convicted on his plea of guilty of violating Penal Code
12 section 246.3, subdivision (a), discharging a firearm in a grossly negligent manner, a crime that is
13 substantially related to the qualifications, functions, and duties of a registered nurse.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 462280, heretofore issued to Respondent Ralph Chen, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 31, 2012.

It is so ORDERED August 3, 2012

Raymond Mallef

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID: SD2011801741

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2012-449**

12 **RALPH CHEN**
13 **2951 Murat Street**
14 **San Diego, CA 92117**

ACCUSATION

15 **Registered Nurse License No. 462280**

16 **Respondent.**

17 **Complainant alleges:**

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about March 31, 1991, the Board of Registered Nursing issued Registered
23 Nurse License Number 462280 to Ralph Chen (Respondent). The Registered Nurse License
24 expired on January 31, 2003, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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1 9. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse or
3 deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

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7 (f) Conviction of a felony or of any offense substantially related to the
8 qualifications, functions, and duties of a registered nurse, in which event the record of
9 the conviction shall be conclusive evidence thereof.

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11 10. Section 2765 of the Code states:

12 A plea or verdict of guilty or a conviction following a plea of nolo contendere
13 made to a charge substantially related to the qualifications, functions and duties of a
14 registered nurse is deemed to be a conviction within the meaning of this article. The
15 board may order the license or certificate suspended or revoked, or may decline to
16 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

17 REGULATORY PROVISIONS

18 11. California Code of Regulations, title 16, section 1444, states:

19 A conviction or act shall be considered to be substantially related to the
20 qualifications, functions or duties of a registered nurse if to a substantial degree it
21 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

22 (a) Assaultive or abusive conduct including, but not limited to, those violations
23 listed in subdivision (d) of Penal Code Section 11160.

24 (b) Failure to comply with any mandatory reporting requirements.

25 (c) Theft, dishonesty, fraud, or deceit.

26 (d) Any conviction or act subject to an order of registration pursuant to Section
27 290 of the Penal Code.

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1 12. California Code of Regulations, title 16, section 1445 states:

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3 (b) When considering the suspension or revocation of a license on the grounds
4 that a registered nurse has been convicted of a crime, the board, in evaluating the
5 rehabilitation of such person and his/her eligibility for a license will consider the
6 following criteria:

6 (1) Nature and severity of the act(s) or offense(s).

7 (2) Total criminal record.

8 (3) The time that has elapsed since commission of the act(s) or offense(s).

9 (4) Whether the licensee has complied with any terms of parole, probation,
10 restitution or any other sanctions lawfully imposed against the licensee.

11 (5) If applicable, evidence of expungement proceedings pursuant to Section
12 1203.4 of the Penal Code.

12 (6) Evidence, if any, of rehabilitation submitted by the licensee.

13 **COST RECOVERY**

14 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **CAUSE FOR DISCIPLINE**

19 **(August 23, 2011 Criminal Conviction for Grossly Negligent Discharge of a Firearm)**

20 14. Respondent has subjected his license to disciplinary action under sections 490 and
21 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
22 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
23 follows:

24 a. On or about August 23, 2011, in a criminal proceeding entitled *People of the*
25 *State of California v. Ralph Chen*, in San Diego County Superior Court, case number CD234576,
26 Respondent was convicted on his plea of guilty of violating Penal Code section 246.3,
27 subdivision (a), discharging a firearm in a grossly negligent manner. The plea agreement reduced
28 the charge from a felony to a misdemeanor pursuant to Penal Code section 17, subdivision (b)(4).

b. As a result of the conviction, on or about August 23, 2011, Respondent was granted three years summary probation and ordered to serve 14 days in the custody of the San Diego County Sheriff, with credit for 14 days. Respondent was ordered not to possess any firearms or ammunition, to submit to a Fourth Amendment Waiver, and he was ordered to stay away from his former roommate.

c. The facts that led to the conviction are that on or about the afternoon of June 1, 2011, officers from the San Diego Police Department were dispatched to Respondent's residence after a report of a firearm being discharged inside the residence. The officers made contact with Respondent's roommate one block away from the residence; he told the officers that Respondent had intentionally fired a gun in the residence during an argument, and that he had fled fearing for his own safety. The officers set a perimeter around Respondent's residence. After the police officers made several announcements over a loudspeaker, Respondent exited the residence and was taken into custody without incident. Respondent gave officers consent to search his residence. A silver revolver was located inside a gym bag in Respondent's bedroom. The officers also found an entry hole where the bullet had entered the wall above a door frame.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 462280, issued to Ralph Chen;

2. Ordering Ralph Chen to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 16, 2012

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant